

AN ORDINANCE AMENDING THE ROGERS CITY CODE BY ADOPTING CHAPTER 38, ARTICLE IV- OUTDOOR/MOBILE FOOD VENDING FOR REGULATING THE OPERATION OF OUTDOOR AND MOBILE FOOD VENDORS IN THE CITY OF ROGERS; PROVIDING FOR THE EMERGENCY CLAUSE AND FOR OTHER PURPOSES

WHEREAS, vending in public accessible areas can promote the public interest by contributing to an active and attractive pedestrian environment; and

WHEREAS, the number of mobile food vendors are rising nationwide, as well as locally, and provide the service of convenient and diverse food choices; and

WHEREAS, outdoor and mobile food vendors present particular needs and concerns with regard to the public health, safety, and welfare; and

WHEREAS, reasonable regulation of outdoor and mobile food vending is necessary to protect the public health, safety, and welfare.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROGERS, ARKANSAS:

Section 1: That Rogers City Code is hereby amended by adopting Chapter 38, Article IV, attached hereto as Exhibit "A", incorporated by reference as if set out word for word herein.

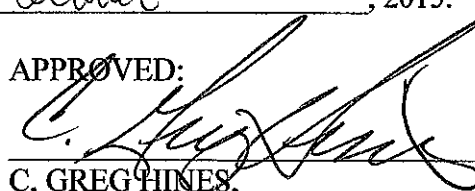
Section 2: That the need to adopt said city code section is immediate and in order to protect the public peace, health, safety and welfare an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from the date of its passage and approval.

Section 3: Severability Provision. In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein.

Section 4: Repeal of Conflicting Ordinances and Resolutions. All ordinances, resolutions or orders of the City Council, or parts of ordinances, resolutions or orders of the City Council in conflict herewith are hereby repealed to the extent of such conflict.

PASSED this 27th day of October, 2015.

APPROVED:


C, GREG HINES,
Mayor

Attest:


PEGGY DAVID, City Clerk

Requested by: Derrel Smith

Prepared by: Chris Griffin, Senior Staff Attorney



Exhibit "A"

Secs. 38-55—38-60- Reserved.

ARTICLE IV. – OUTDOOR/MOBILE FOOD VENDORS

Sec. 38-61. – Outdoor and Mobile Food Vendors

A. Purpose and Intent:

- 1) To serve and protect the health, safety, and welfare of the general public.
- 2) To establish a uniform set of rules and regulations that are fair and equitable.
- 3) To provide economic development opportunities to small entrepreneurs in the city.
- 4) To promote stable vendors who will enrich the city's ambiance and be assets to public security.

B. Definitions:

Mobile Food Vehicle: A food establishment preparing and/or serving foods from a self-contained vehicle either motorized or within a trailer that is readily movable without disassembling for transport to another location. Mobile food vehicles may serve as a conveyance for outdoor vending at a fixed location.

Mobile Food Vendor: Any person that owns or operates a mobile food vehicle for the purpose of mobile vending, as defined.

Outdoor Vending: Exhibiting, displaying, selling or offering for sale any food, beverages, goods, wares, or merchandise from a conveyance at a fixed location on public or private property.

Outdoor Vendor: A person that exhibits, displays, sells or offers for sale any food, beverages, goods, wares or merchandise from a conveyance at a fixed location. This definition does not include a door-to-door solicitor, mobile food vending, children's lemonade stands or homeowners having garage sales.

Outdoor Vendor Park: A site that contains more than one outdoor vendor on a regular basis as the principal use of land.

C. Permit Required

- 1) **Applicability.** It shall be unlawful for any person to engage in the business of outdoor vending or mobile food vending unless he/she has first obtained a vending permit from the Planning Office, except as exempted in C. *Exemptions* below. All permits shall be issued according to the regulations herein.
- 2) Applicants may request a Vending Permit for either (1) outdoor vending or (2) mobile food vending. The application for a vending permit shall contain all

information relevant and necessary to determine whether a particular permit may be issued, including, but not limited to:

- I. The applicant's full name, current address, telephone number and proof of identity together with a full-face photograph of the applicant, not less than two inches or more than three inches square.
 - II. A brief description of the nature, character, and quality of goods, wares, or merchandise to be offered for sale.
 - III. Site plan showing proposed location and distances in compliance with the location requirements in Subsection D.3.
 - IV. Detailed scaled drawing or photo of the conveyance showing dimensions and location of any proposed signs.
 - V. Written consent of the property owner, if applicable.
 - VI. Proof of notification of adjacent property owner (i.e. certified mail receipt or letter from the owner), if outdoor vendor is adjacent to a residential district.
 - VII. If the applicant is engaged in the sale of food or beverages, a copy of the Benton County Health Department Inspection certificate shall be provided.
 - VIII. If the applicant is employed by another, the name and address of the person, firm, association, organization, company or corporation of employment.
 - IX. If a motor vehicle is to be used, the motor vehicle make, year, model and license number.
- 3) In addition to the information listed above, mobile food vendors shall also provide:
- I. Proof of current driver's license for all drivers.
 - II. Proof of current insurance for the mobile food vehicle.
- 4) Fee. The applicant shall pay the fee as adopted from time to time by the City Council, as listed in Appendix B-Fee Schedule of the Rogers City Code of Ordinances.
- 5) Issuance of Permit
- I. The applicant shall be notified in writing by the City Planner or his/her designee of the City's decision to issue or deny the vending permit not later than thirty (30) days after the applicant has filed a completed application with the Planning Department.
 - II. Any applicant may appeal a denied application to the City Planning Commission within 10 days of the denial by sending written notice to the City Clerk, to be heard at the next available Planning Commission Meeting.
 - III. Each permit shall show the name and address of the vendor, the type of permit issued, the kind of goods to be sold, the amount of the permit, the date of issuance, the permit number, an identifying description of any motor vehicle or conveyance used by the vendor plus, where applicable, the motor vehicle

registration number and a photograph of the vendor not less than two inches square nor more than three inches square. Each permit shall also show the expiration date of the permit.

IV. All permits issued under this section shall be both non-assignable and non-transferable.

6) Display of Permit. Any permit issued by the City Planner or his/her designee shall be carried with the vendor whenever he/she is engaged in vending. Certificate of Health Inspection from the Benton County Health Department shall also be properly and conspicuously displayed at all times during the operation of the vending business.

7) Expiration and Renewal.

(a) Fixed Permit. All fixed vending permits expire annually at midnight on December 31st. A vending permit may be renewed, provided an application for renewal and permit fees are received by the City no later than the expiration date of the current permit. Any application received after that date shall be processed as a new application. The city planner or his/her designee shall review each application for renewal, and upon determining that the applicant is in full compliance with the provision of these regulations, shall issue a new permit.

(b) Temporary permit. All temporary permits issued shall be valid only for the time period established on the permit, not to exceed 120 days from the date of issuance.

8) Notification of Name or Address Change. All vendors shall assure that the current and correct name, residence address and mailing address are on file with the Planning Department. Whenever either the name or address provided by a permitted vendor on an application for a vending permit changes, the vendor shall notify the City Planner in writing within 30 days of such change and provide the same with the name change or address change.

D. Exemptions.

1) Exempt activities. The provisions of the ordinance do not apply to:

- I. Goods, wares, or merchandise temporarily deposited on the sidewalk in the ordinary course of deliver, shipment, or transfer.
- II. The placing and maintenance of unattended stands or sales devices for the sale, display or offering for sale of newspapers, magazines, periodicals and paperbound books.
- III. The distribution of free samples of goods, wares, and merchandise by any individual from his person.

- IV. Sidewalk sales lasting no longer than three (3) consecutive days, so long as at least 4' of sidewalk remains clear for pedestrian access. No more than three sidewalk sales per business shall be permitted per calendar year.
 - V. Temporary sales to benefit non-profit organizations and conducted on private property. Such sales shall be conducted no longer than five consecutive days.
 - VI. Merchants participating in outdoor markets or special events organized or administered by the City of Rogers or Downtown Rogers Inc. Such merchants shall be approved by the organizing or administering agency.
- 2) **Claims of exemption.** Any person claiming to be legally exempt from the regulations set forth herein, or from the payment of a permit fee, shall cite to the City Planner or his/her designee the statute or other legal authority under which exemption is claimed and shall present proof of qualification of such exemption.
- E. **Outdoor Vending.** The following requirements shall apply to outdoor vending at fixed locations.
- 1) **Private Property.**
- I. **Single Vendor.**
 - a. **Zoning Districts.** Outdoor vendors shall be permitted on developed private property only in COR, COM, and IA zoning districts also C-2, C-4, and I-1 zoning districts. Outdoor vendors are prohibited in residential zoning districts.
 - b. **Number of Vendors.** Only one (1) outdoor vendor shall be permitted per lot. However, if more than one vendor is proposed for a single lot, it shall be considered an outdoor vendor park and shall meet the requirements for Outdoor Vendor Park below.
 - c. **Permission required.** Outdoor vendors shall first obtain written permission from the property owner prior to submitting for an application.
 - d. **Size restrictions.** The area occupied by a vendor shall not exceed 900 sq. ft. and shall be located on hard surface paving (asphalt or concrete).
 - II. **Outdoor Vendor Park**
 - a. **Zoning Districts.** Outdoor vendor parks shall be permitted on private property as a conditional use in COR, COM, and IA zoning districts also C-2, C-4, and I-1 zoning districts. Outdoor vendor parks are prohibited in residential zoning districts.
 - b. **Review Criteria.** The Planning Commission shall review the application based on the specific circumstances of the proposed vendor park including the location of the park, the size of the lot where the park is located, the types of surrounding land uses, parking, and any other

potential impacts on public health, safety and welfare. The Planning Commission shall determine the number of outdoor vendors permitted within the outdoor vendor park.

III. Requirements. The property owner proposing an outdoor vendor park may be required to make any of the following necessary improvements to the property in order to meet the city development codes and be approved for the semi-permanent use:

- a. Make any improvements necessary to the site to meet the requirements of Section 14-204 through 14-345. This may include Landscaping, Screening, and Buffering in the Large Scale Development Plans
- b. Make any improvements necessary to the site to meet the requirements of Sections 14-708, 14-709, 14-710, 14-711, 14-713, 14-714, and 14-715 for Parking and Loading of the Zoning Code. This may include paving striping and the construction or designation of handicapped parking spaces.
- c. Make any necessary improvements to provide permanent utility connections for each outdoor vending unit in the outdoor vendor court. This shall include permanent water, sanitary sewer, and electricity connections.
- d. Make any improvements necessary to ensure safe pedestrian and vehicular access to the site. This may include sidewalk and curb-cut improvements.
- e. Individual outdoor vendor units operating in an outdoor vendor park shall obtain an outdoor vendor permit and shall meet all of the applicable requirements.

2) Public Property/Right-of-Way. Outdoor vending on public right-of-way and public property shall only be permitted in special outdoor vendor districts as identified herein or otherwise established by City Council. The following areas shall be included as special outdoor vendor districts: **Watertower District, Victory Row, Frisco Front, and Walnut Corridor.**

- I. **District Boundaries.** The area described in the Downtown Rogers Development Code.
- II. **Locations.** Vending locations on public property or right-of-way within the ***District*** shall be approved by the Planning Department, and/or the Transportation Committee of the Rogers City Council, based on the location restrictions d.3 below. A vendor shall be permitted no more than one vending permit in this

district. Vendors with a valid permit for a specific location shall be permitted to continue at that location for so long as the permit under this section is continuously issued and does not expire or is not revoked pursuant to the section.

III. Vending Stand. Outdoor vendors in the *District*, vending on public property or right-of-way, shall be limited to only hand carts, push carts, or peddle carts with a dimension that shall not exceed 8 feet in length, 4 feet in width, and 6 feet in height, (exclusive of canopies or umbrellas) anywhere within the *District*. Vending stands shall be located on hard surface paving.

IV. Special Events. Outdoor vendor permits issued are invalid during special events coordinated by The City of Rogers and/or Downtown Rogers Inc. The City may provide written permission for the outdoor vendor to continue to conduct business during the special event, but may request the vendor to relocate or adjust operations to within a close reasonable proximity of the assigned location to accommodate any logistical or technical necessity. A copy of such letter shall be provided to the Planning Department.

3) Location Restrictions. Absolutely no outdoor or mobile vendor shall be permitted to operate in the following areas:

- I.** Within 10 feet of any street intersection or pedestrian crosswalk.
- II.** Within 10 feet of any driveway, loading zone, or bus stop.
- III.** In any area within 15 feet of a building entrance.
- IV.** On the median strip of a divided roadway unless the strip is intended for use as a pedestrian mall or plaza.
- V.** Any area within 100 feet of a hospital, college, university, elementary school, middle school, or high school.
- VI.** Within 10 feet of any fire hydrant or fire escape.
- VII.** Within 10 feet of any parking space or access ramp designated for persons with disabilities.
- VIII.** In a public parking space or public parking lot unless appropriate approval is obtained from the Transportation Committee of the Rogers City Council per Rogers City Code 52-4.

- IX. Within 25 feet of any bus stop sign.
- X. Within 50 feet of driveway to a police or fire station.
- XI. Within 50 feet of principal public entrance to food service business not owned by vendor.
- XII. Any area that obstructs pedestrian traffic. Must provide four (4) feet clear passageway for pedestrians at all times.
- XIII. Vacant or undeveloped property.
- XIV. Any location other than the assigned location as expressly described on the permit.
- XV. City public park property.
- XVI. On grass.

4) **Hours of Operation.** Outdoor vendors shall be allowed to engage in the business of vending only between the hours of 7 a.m. and 10 p.m.

F. Mobile Food Vending. The following requirements apply to mobile food vendors

1. Equipment Requirements. All mobile food vendor conveyances shall have the following features:

- I. Convex mirror mounted on the front of the vehicle such that the driver in his normal seating position can see the area in front of the truck obscured by the hood.
- II. "SLOW CHILDREN CROSSING" sign printed in six inch black letters on yellow background on both the front and back of the vehicle.
- III. Passenger side mirror.
- IV. Business name, address, and phone number printed in 2" letters on each side of the vehicle.
- V. Trash receptacle.
- VI. "Slow" signal arm that can be extended horizontally from the left side of the truck. This arm shall be yellow with six inch black lettering and two alternating flashing amber lights three to five inches in diameter. The bottom of the signal arm shall be approximately 42" above the roadway or street.
- VII. The vehicle shall be lawfully parked or stopped before vending can take place.

2. General Requirements

- I. "Slow" signal arm shall be deployed when vehicle is stopped for vending purposes.
- II. The vehicle shall not be stopped for vending purposes when no customers are present.
- III. Vending shall take place from the right side of the vehicle.

- IV. Vending shall not occur with a customer standing within the roadway.
- V. Vending shall only include prepackaged products.
- VI. Vehicles shall not be operated in reverse to accommodate a customer.

3. Location Restrictions

- I. Mobile food vending shall only take place on streets where on-street parking is allowed.
- II. No vending shall be permitted within 500 feet of a school while school is in session and one hour before and after school is in session.

4. Hours of Operation. Mobile food vendors shall be allowed to engage in the business of vending only between 10 a.m. and 30 minutes before sunset.

G. Littering and Trash Removal

1. Vendors shall keep the sidewalks, roadways, and other spaces adjacent to their vending sites or locations clean and free of paper, peelings, and refuse of any kind generated from the operation of their business. All trash or debris accumulating within 25 feet of any vending stand shall be collected by the vendor and deposited in a trash container.

2. Persons engaged in food vending shall provide a receptacle for litter that shall be maintained and emptied regularly and marked as being for litter.

H. Prohibited Conduct No person authorized to engage in the business of vending under these regulations shall do any of the following:

- 1. Unduly obstruct pedestrian or motor vehicle traffic flow, except for up to 20 minutes to load and unload vending conveyance and/or vending merchandise.
- 2. Obstruct traffic signals or regulatory signs.
- 3. Stop, stand, or park any motor vehicle or any other conveyance upon any street for the purpose of selling during the hours when parking, stopping, and standing have been prohibited by signs or curb markings.
- 4. Leave any conveyance unattended at any time or store, park, or leave such conveyance in a public way overnight.
- 5. Use any conveyance that when fully loaded with merchandise cannot be easily moved and maintained under control by the permittee his employee or an attendant.

6. Sound any device that produces a loud and raucous noise or operate any loudspeaker, public address system, radio, sound amplifier, or similar device to attract public attention. However, mobile food vendors are permitted to play non-vocal music within the regulations of the City of Rogers noise ordinance, but shall not do so within 500 feet of hospitals, schools, or churches. Nothing in this section shall exempt vendors from compliance with the Noise Ordinance contained in Section 18-26 of the Rogers City Code.
7. Conduct his/her business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, create a nuisance, increase traffic congestion or delay, constitute a hazard to traffic, life, or property or obstruct adequate access to emergency and sanitation vehicles.
8. Use, install, or display any signage that in not in compliance with the sign codes for the City of Rogers.
9. Altering vehicle to allow for additional signage.
10. No vending conveyance or other item related to the operation of a vending business shall be located on any city sidewalk or other public way during non-vending hours. Nor shall any mobile food vehicle be parked, stored, or left overnight other than in a lawful parking place.
11. Run hoses, cords, or other apparatus across a pedestrian pathway.

I. Suspension and Revocation of Permit

1. **Conditions for Suspension/Revocation.** In addition to the penalties punishable as set forth in Rogers Municipal Code, any permit issued under these regulations may be suspended or revoked for any of the following reasons:
 - i. Fraud, misrepresentation or knowingly false statement contained in the application for the permit.
 - ii. Fraud, misrepresentation or knowingly false statement in the course of carrying on the business of vending.
 - iii. Conducting the business of vending in any manner contrary to the conditions of the permit, or in violation of this code.

- iv. Conducting the business of vending in such a manner as to create a public nuisance, cause a breach of the peace, constitute a danger to the public health, safety, welfare, or morals, or interfere with the rights of abutting property owners.
 - v. Cancellation of health department authorization for a food or beverage vending unit due to uncorrected health or sanitation violations.
- 2. Notification of Suspension or Revocation.** The City Planner or his/her designee shall provide written notice of the pending suspension or revocation in a brief statement setting forth the complaint, the ground for suspension or revocation, and notifying the vendor that if the issues are not corrected within 7 days of receipt of the Notice, the permit may be suspended or revoked. Such notice shall be mailed to the address shown on the permit holder's application by certified mail, return receipt requested.
- 3. Appeal of Suspension or Revocation.** If the permit is suspended or revoked by the City Planner, the permit holder shall have 10 days from the date of the suspension or revocation to file their appeal for consideration by the Planning Commission. The appeal shall be filed by sending written notice to the City Clerk and shall be heard at the next available Planning Commission meeting. The timely filing of an appeal to the Planning Commission shall stay the suspension or revocation of the permit until the matter is heard by the Planning Commission.
- 4. Forfeiture of Fee.** If the City revokes a vending permit, the fee already paid for the permit shall be forfeited. A person whose permit has been revoked under this Section may not apply for a new permit for a period of one (1) year from the date that the revocation took effect.
- 5. Penalty.** Any violation of this section shall be subject to the penalty provisions as outlined in Section 1-5.